

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 323 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KALABHAI KANABHAI ADIVASI

Versus

STATE OF GUJARAT

Appearance:

MR ADIL MEHTA for Petitioners
MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 29/08/97

ORAL JUDGEMENT

The complaint came to be lodged with Amirgadh Police Station of District Banaskantha being C.R.No.I-22 of 1993 for offences under Sections 332, 323, 504, 506(2) of IPC, Section 135 of Bombay Police Act and Section 3(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, by the present

petitioner no.1, on 29.5.1993 at about 11.30 p.m. The alleged incident had occurred at 3.00 p.m. on that very day.

The Special Case arising out the said complaint being No.148 of 1993 was taken up for trial by the ld. Special Judge of Banaskantha, at Palanpur and the evidence was recorded on and from 21st January 1997.

The ld.trial Judge by judgment dated 10.2.1997 acquitted the accused and in the process, in paragraph 13 on page 22, paragraph 14 on page 23, paragraph 15 on page 24 and lastly in paragraphs 17 and 18 on page 26, made certain observations and came to certain conclusions which led him to issue notice under Section 344 of Code of Criminal Procedure upon the petitioner nos.1 and 2, the complainant and one witness respectively.

Looking to the FIR, the petitioners nos.2 and 3 are eye witnesses.

If the incident described in the complaint is summarised, original accused Narendrasinh Chauhan accused no.2 accompanied by accused no.1 stopped them and picked up quarrel. The accused no.2, at the relevant time, was Sarpanch. The Petitioner no.2 is referred to as the Talati and the petitioner No.1 happens to be the Peon of the Panchayat.

The grudge on the part of the accused no.2, according to the complaint, was that he appeared to be too much liar and faithful to the Talati and, therefore, the accused no.2 had taunted him. One thing led to the other and according to the complaint, the accused no.2 manhandled him. Subsequently, even a gun was aimed at the complainant by the accused no.2.

The ld.trial Judge had noted that, in the course of depositions, the petitioners have tried to improve upon their versions and have tried to wrongly implicate the accused further. This is not the first case where such discrepancy might have arisen. The ld. Judge ought to have borne in mind the fact that, for the complaint of the month of May 1993, when the evidence is recorded in January 1997 after more than 3-1/2 years, the memory of the witnesses cannot be said to be machine-like or computer-like as to repeat the word exactly and some discrepancy or the other is bound to be crept in, due to passage of time.

If, as observed by the ld.Judge, there is rank

improvement so far as the accused no.1 is concerned, inasmuch as he was said to have aimed gun at the complainant instead of accused no.2, it would amply mean that the accused no.1 had not played any part whatsoever while in the first instance when the charge was framed.

Having framed the charge and the two accused were together participating in the incident, Section 114 of IPC too having been invoked merely because the aforesaid discrepancy as to indicate the aiming of gun has crept in which has accounted for by passage of time and such other infirmities which can be attributed only to the passage of time, there would be no justification for proceeding against the petitioners under Section 344 of the Code of Criminal Procedure.

For exercising power under Section 344 of Code of Criminal Procedure, the ld.trial Judge should have expressed an opinion to the effect that the witnesses appearing in the proceeding had knowingly or wilfully given false evidence or had fabricated false evidence and that he should be satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily, he may proceed thereon. In the instant case, these ingredients are missing. Obviously, therefore, the petition would succeed.

Accordingly the petition is allowed. The order passed by the ld.Special Judge under Section 344 of Code of Criminal Procedure is set aside. Rule is made absolute accordingly.

sreeram.